



January 16, 2025

[REDACTED]

RE: [REDACTED] a Protected Individual, v. WVDoHS  
ACTION NO.: 24-BOR-3695

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Human Services. These same laws and regulations are used in all cases to assure that all people are treated alike.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

Encl: Recourse to Hearing Decision  
Form IG-BR-29

cc: Stacy Broce, BMS  
Kerri Linton, PC&A  
Janice Brown, Acentra

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW**

■ A PROTECTED INDIVIDUAL,

**Appellant,**

v.

**Action Number: 24-BOR-3695**

**WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES  
BUREAU FOR MEDICAL SERVICES,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**INTRODUCTION**

This is the decision of the State Hearing Officer resulting from a fair hearing for ■ a Protected Individual. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Office of Inspector General Common Chapters Manual. This fair hearing was convened on January 8, 2025.

The matter before the Hearing Officer arises from the Respondent's denial of benefits under the Intellectual and Developmental Disabilities (I/DD) Waiver Medicaid Program as outlined in a notice dated October 21, 2024.

At the hearing, the Respondent appeared by Charley Bowen, Licensed Psychologist, Psychological Consultation & Assessment (PC&A). The Appellant was represented by his adoptive mother, ■. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Policy Chapter 513.6
- D-2 Notice of Denial dated October 21, 2024
- D-3 Independent Psychological Evaluation (IPE) dated October 8, 2024
- D-4 Independent Psychological Evaluation dated June 4, 2012
- D-5 Notice of Denial dated June 27, 2012
- D-6 ■ Schools Psychoeducational Evaluation dated September 7, 2022
- D-7 ■ Schools Individualized Education Program, meeting date September 20, 2023

D-8 Notice of Eligibility Committee and/or Individualized Education Program Team Meeting and [REDACTED] Schools Individualized Education Program, meeting date September 3, 2024

**Appellant's Exhibits:**

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

**FINDINGS OF FACT**

- 1) The Appellant, who is currently 15 years old, applied for the Intellectual and Developmental Disabilities (I/DD) Waiver Medicaid Program.
- 2) The Respondent sent the Appellant a Notice of Decision on October 21, 2024, indicating that his I/DD Waiver application was denied (Exhibit D-2).
- 3) The October 21, 2024, notice states that the Appellant's I/DD Waiver Medicaid application was denied because "Documentation submitted does not support the presence of substantial adaptive deficits in three or more of the six major life areas identified for Waiver eligibility. Specifically, the documentation failed to demonstrate substantial limitations in the following major life areas: Self-Care, Self-Direction, Mobility, and Capacity for Independent Living" (Exhibit D-2).
- 4) The Appellant underwent an Independent Psychological Evaluation (IPE) on October 8, 2024 (Exhibit D-3).
- 5) The Respondent conceded that the Appellant has a potentially eligible I/DD Waiver Program diagnosis of Autism Spectrum Disorder Level 3, requiring substantial support with accompanying language and cognitive impairment (Exhibit D-3).
- 6) In addition to the Autism Spectrum Disorder diagnosis, the IPE lists diagnoses of Language Disorder, Mild Intellectual Disability, Specific Learning Disabilities with impairment in reading, written expression, and mathematics, and Tuberos Sclerosis (Exhibit D-3).
- 7) The Respondent conceded that the Appellant has substantial adaptive deficits in the major life areas of **Learning** and **Receptive or Expressive Language** (Exhibits D-2 and D-3).
- 8) The Appellant can shower independently but requires prompting and assistance with washing his hair. The Appellant toilets independently, picks out his own clothing, and dresses himself. The Appellant can prepare a sandwich and use a microwave oven but cannot use a stove or prepare meals that require a recipe or multiple steps (functional area of **Self-Care**) (Exhibit D-3).

- 9) The Appellant ambulates independently but struggles with climbing stairs and running due to hypotonia in his core (functional area of *Mobility*) (Exhibit D-3).
- 10) The Appellant can express his preferences and chooses leisure activities which are typically limited to topics of interest on which he hyper-focuses. He does not generally engage with strangers, lacks social skills, and prefers to be on his own or with a person very close to him (functional area of *Self-Direction*) (Exhibit D-3).
- 11) The Appellant does not reliably look both ways on the street. He does not make good food choices and would only eat popcorn if left to his own devices. The Appellant does not lock doors or take showers and brush his teeth without prompting. He has significant problems distinguishing reality from fiction (functional area of *Capacity for Independent Living*) (Exhibit D-3).
- 12) The Appellant attained a full-scale IQ score of 63 on the Weschler Adult Intelligence Scale-Fifth Edition (WAIS-V) (Exhibit D-3).
- 13) The Appellant's scores on the Adaptive Behavior Assessment System-Third Edition (ABAS-3) Parent Form ranged from 3 to 7 in the areas of community use, home living, health and safety, leisure, self-care, self-direction, and social. ABAS scores of 1 and 2 are program-eligible scores for the I/DD Waiver Program. The Appellant received program-eligible scores of 1 on the Parent Form in the areas of communication and functional academics (Exhibit D-3).
- 14) The Appellant received program-eligible scores on the ABAS-3 Teacher Form in the areas of communication, 1; community use, 1; functional academics, 1; and leisure, 1 (Exhibit D-3).
- 15) The Appellant received an autism index score of 115 on the Gilliam Autism Rating Scale-Third Edition (GARS-3). The evaluator indicated that the probability of Autism Spectrum Disorder was "very likely" with a severity level of 3 (Exhibit D-3).
- 16) The Appellant underwent an IPE on June 4, 2012, at the age of three during which he was diagnosed with Pervasive Developmental Disorder NOS, mental retardation unspecified, and tuberous sclerosis (Exhibit D-4).
- 17) The Appellant received a program-eligible score of 2 in communication on the ABAS-II Parent rating during the 2012 IPE. No other program-eligible scores were noted on the Parent rating (Exhibit D-4).
- 18) The Appellant received program eligible scores of 1 or 2 in communication, leisure, and social on the ABAS-II Teacher rating (Exhibit D-4).
- 19) The Appellant underwent a [REDACTED] Schools Psychoeducational Evaluation on September 1, 2022, at age 13 (Exhibit D-6).

- 20) The Appellant received program-eligible scores of 1 or 2 in the following areas on the ABAS-3 Parent rating during the 2022 Psychoeducational Evaluation: communication, 1; functional academics, 1; community use, 2; and self-care, 2 (Exhibit D-6).
- 21) The Appellant received program-eligible scores of 1 or 2 in the following areas on the ABAS-3 Teacher rating during the 2022 evaluation: communication, 1; functional academics, 1; self-direction, 2; leisure, 2; social, 1; community use, 1; school living, 1; and health and safety, 1 (Exhibit D-6).
- 22) A [REDACTED] Schools Individualized Education Program (IEP) report dated September 20, 2023, indicates that the Appellant spent 42 percent of his time in a general education environment and 58 percent of his time in special education (Exhibit D-7).
- 23) A [REDACTED] Schools Individualized Education Program (IEP) report dated September 3, 2024, indicates that the Appellant spent 62 percent of his time in a general education environment and 38 percent of his time in special education (Exhibit D-8).

### **APPLICABLE POLICY**

West Virginia Medicaid Regulations, Chapter 513.6 (Exhibit D-1) state:

#### **513.6.2.1 Diagnosis**

The applicant must have a diagnosis of intellectual disability with concurrent substantial deficits manifested prior to age 22, or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22.

Examples of related conditions which may, if severe and chronic in nature, make an individual eligible for the I/DD Waiver Program include, but are not limited to, the following:

- Autism;
- Traumatic brain injury;
- Cerebral Palsy;
- Spina Bifida; and

Any condition, other than mental illness, found to be closely related to intellectual disabilities because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of intellectually disabled persons, and requires services similar to those required for persons with intellectual disabilities.

Additionally, the applicant who has the diagnosis of intellectual disability

or a severe related condition with associated concurrent adaptive deficits must meet the following requirements:

- Likely to continue indefinitely; and,
- Must have the presence of at least three substantial deficits out of the six identified major life areas listed in *Section 513.6.2.2 Functionality*.

### **513.6.2.2 Functionality**

The applicant must have substantial deficits in at least three of the six identified major life areas listed below:

- Self-care;
- Receptive or expressive language (communication);
- Learning (functional academics);
- Mobility;
- Self-direction; and,
- Capacity for independent living which includes the following six sub-domains: home living, social skills, employment, health and safety, community, and leisure activities. At a minimum, three of these sub-domains must be substantially limited to meet the criteria in this major life area.

Substantial deficits are defined as standardized scores of three standard deviations below the mean or less than one percentile when derived from a normative sample that represents the general population of the United States, or the average range or equal to or below the 75<sup>th</sup> percentile when derived from Intellectual Disability (ID) normative populations when intellectual disability has been diagnosed and the scores are derived from a standardized measure of adaptive behavior. The scores submitted must be obtained from using an appropriate standardized test for measuring adaptive behavior that is administered and scored by an individual properly trained and credentialed to administer the test. The presence of substantial deficits must be supported not only by the relevant test scores, but also the narrative descriptions contained in the documentation submitted for review, i.e., psychological report, the IEP, Occupational Therapy evaluation, etc., if requested by the IP for review.

### **513.6.2.3 Active Treatment**

Documentation must support that the applicant would benefit from continuous active treatment. Active treatment includes aggressive consistent implementation of a program of specialized and generic

training, treatment, health services, and related services. Active treatment does not include services to maintain generally independent individuals who are able to function with little supervision or in the absence of a continuous active treatment program.

## DISCUSSION

To qualify medically for the I/DD Waiver Medicaid Program, policy states that an applicant must have a diagnosis of intellectual disability with concurrent substantial deficits manifested prior to age 22, or a related condition which constitutes a severe and chronic disability with concurrent substantial deficits manifested prior to age 22. In addition, an individual must meet the need for active treatment/services criteria.

Charley Bowen, Licensed Psychologist with PC&A, testified that the Appellant's Level 3 Autism Spectrum Disorder diagnosis meets diagnostic criteria for the I/DD Waiver Program and the Respondent identified substantial adaptive deficits for the Appellant in the functional areas of *Learning* and *Receptive or Expressive Language*. The Respondent was unable to identify any further substantial adaptive deficits for the Appellant based on ABAS scores and narrative evidence.

The Appellant is ambulatory (*Mobility*) and can perform most self-care tasks independently or with prompting (*Self-Care*). The Appellant can express his preferences and choose leisure activities (*Self-Direction*). The Appellant received no program-eligible ABAS scores in *Self-Direction* on the October 2024 Psychological Evaluation. While the Teacher rating on the 2022 Psychoeducational Evaluation showed a program-eligible ABAS score in *Self-Direction*, that score was inconsistent with the higher *Self-Direction* score listed on the Parent rating.

The functional area of *Capacity for Independent Living* is comprised of the subdomains of home living, social skills, employment, health and safety, community, and leisure activities. An individual must be substantially deficient in three of the six subdomains to receive a deficit in *Capacity for Independent Living*. Mr. Bowen testified that the Appellant's ABAS testing scores have displayed inconsistencies between the Parent and Teacher ratings. The Appellant received no program-eligible ABAS scores in *Capacity for Independent Living* subdomains on the 2024 Psychological Evaluation Parent rating but received program-eligible ABAS scores in the subdomains of community use and leisure on the Teacher rating. The Appellant received a program-eligible score in one subdomain, community use, on both the Teacher and Parent ratings during the 2022 [REDACTED] Schools Psychoeducational Evaluation. The Appellant's ABAS scores have not consistently reflected substantial dysfunction in three of the six subdomains required to receive a deficit in the functional area of *Capacity for Independent Living*.

[REDACTED], the Appellant's adoptive mother, testified that she had provided information about the Appellant's functionality based on a "best day" scenario. She indicated that the Appellant could not live independently because he cannot communicate his needs verbally or in writing and has a limited IQ. The Appellant could not call for help and lacks an understanding of money. He could not pay bills, read a bill, or fill out a check. The Appellant could not communicate with others or participate in a club or social event without someone speaking on his behalf. [REDACTED] testified that

the Appellant is “essentially a six-year-old,” and that she may have needed to provide additional information about his self-care and self-direction abilities during the evaluation.

While the Appellant clearly faces many challenges, only two substantial adaptive deficits in functional areas could be identified based on the documentation provided for review. Therefore, the Respondent acted correctly in denying the Appellant’s I/DD Waiver application.

### **CONCLUSIONS OF LAW**

- 1) To qualify for I/DD Waiver Medicaid benefits, an individual must meet the diagnostic, functionality, severity, and need for active treatment/services criteria.
- 2) The Appellant meets diagnostic criteria for the program.
- 3) Substantial adaptive deficits must be identified for the Appellant in at least three functional areas to meet functionality criteria.
- 4) Two substantial adaptive deficits could be identified for the Appellant as a result of the documentation provided for review.
- 5) The Respondent’s decision to deny I/DD Waiver Medicaid benefits based on failure to meet program criteria is affirmed.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent’s action to deny the Appellant’s I/DD Waiver Medicaid application.

**ENTERED this 16th day of January 2025.**

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**Pamela L. Hinzman  
State Hearing Officer**